

ACT XXVI OF 1917.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

(Received the assent of the Governor General on the 27th September, 1917.)

An Act to validate certain transfers of property made prior to the 1st of January, 1915.

WHEREAS it is expedient to validate certain transfers of property made prior to the 1st of January, 1915 ; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Transfer of Property (Validating) Act, 1917.

(2) It shall extend, in the first instance, to the United Provinces of Agra and Oudh, provided that the Governor General in Council may, by notification in the Gazette of India, extend it to any other part of British India specified in the notification.

Validation of certain transfers made prior to the 1st of January, 1915.

2. Where a mortgage or gift purports to have been effected by an instrument executed prior to the 1st of January, 1915, and such instrument is required by the Transfer of Property Act, 1882, to be attested, such mortgage or gift shall not be deemed to be invalid by reason only that any person who purported to attest such instrument as a witness did not see the executant sign it, provided that such person before signing his name on the instrument received from the executant a personal acknowledgment of his signature to the same.

IV of 1882

Restoration of certain claims.

3. Where a claim under any such instrument executed prior to the 1st of January, 1915, has been wholly or in part dismissed, rejected, or withdrawn, after the 30th day of July, 1912, and before the commencement of this Act, in a Court of first instance or of revision or appeal, by reason only of the fact that some person who purported to attest such

such instrument as a witness, on having received before signing his name thereon a personal acknowledgment from the executant of his signature to the same, did not see the executant sign it, the case may, if the dismissal, rejection or withdrawal has had the effect of invalidating, in whole or in part, the said instrument as between persons claiming thereunder, be restored on review in accordance with the procedure provided by the Code of Civil Procedure, 1908, for review of judgments, on application in writing made within six months from the commencement of this Act; and on such restoration, the provisions of section 2 shall apply to such instrument :

v of 1908.

Provided nevertheless—

- (1) that every Court to whom such an application is made shall have a discretion to refuse the same if it is of opinion that such restoration would prejudice the rights of any transferee for value in good faith under any transfer made subsequent to the said 30th day of July, 1912 ;
- (2) that in the event of a decree being passed upon such application in favour of the applicant or his legal representative interest shall only be allowed under such instrument at the contractual rate up to the date of the original dismissal, rejection or withdrawal of such claim, and for a period of six months therefrom, and at the rate of 6 per cent. thereafter until realization ; and
- (3) that in the event of the case being so restored the Court shall be bound by the finding of the former Court, by or before whom the case was dismissed, rejected or withdrawn, on any issue of fact which was heard and finally determined by it.